

is no change in the yield. In addition, this paragraph (h)(4)(iii) does not apply to a termination caused by the bankruptcy or insolvency of the hedge provider if the Commissioner determines that the termination occurred without any action by the issuer (other than to protect its rights under the hedge).

(5) *Special rules for certain hedges*—(i) *Certain acquisition payments.* A payment to the issuer by the hedge provider (e.g., an up-front payment for an off-market swap) in connection with the acquisition of a hedge that, but for that payment, would be a qualified hedge, does not cause the hedge to fail to be a qualified hedge provided the payment to the issuer and the issuer's payments under the hedge in excess of those that it would make if the hedge bore rates equal to the on-market rates for the hedge are separately identified in a certification of the hedge provider and not taken into account in determining the yield on the issue of which the hedged bonds are a part. The on-market rates are determined as of the date the parties enter into the contract.

(ii) *Anticipatory hedges*—(A) *In general.* A contract does not fail to be a hedge under § 1.148-4(h)(2)(i)(A) solely because it is entered into with respect to an anticipated issuance of tax-exempt bonds. The identification required under § 1.148-4T(h)(2)(ix) must specify the reasonably expected governmental purpose, principal amount, and issue date of the hedged bonds, and the manner in which interest is reasonably expected to be computed.

(B) *Special rules.* Payments made in connection with the issuance of a bond to terminate or otherwise close (terminate) an anticipatory hedge of that bond do not prevent the hedge from satisfying the requirements of § 1.148-4(h)(2)(vi) and paragraph (h)(2)(vii) of this section. Amounts received or deemed to be received by the issuer in connection with the issuance of the hedged bonds to terminate an anticipatory hedge are treated as proceeds of the hedged bonds.

(C) *Fixed yield treatment.* A bond that is hedged with an anticipatory hedge is a fixed yield bond if, taking into account payments on the hedge that are made or fixed on or before the issue

date of the bond and the payments to be made on the bond, the bond satisfies the definition of fixed yield bond. See also paragraph (h)(4) of this section.

(6) *Authority of the Commissioner*—(i) *In general.* A contract is not a qualified hedge if the Commissioner determines, based on all the facts and circumstances, that treating the contract as a qualified hedge would provide a material potential for arbitrage, or a principal purpose for entering into the contract is that arbitrage potential. For example, a contract that requires a substantial nonperiodic payment may constitute, in whole or part, an embedded loan, investment-type property, or other investment.

(ii) *Other qualified hedges.* The Commissioner, by publication of a revenue ruling or revenue procedure, may specify contracts that do not otherwise meet the requirements of § 1.148-4(h)(2) as qualified hedges and contracts that do not otherwise meet the requirements of paragraph (h)(4) of this section as causing the hedged bonds to be treated as fixed yield bonds.

(iii) *Recomputation of yield.* If an issuer enters into a hedge that is not properly identified, fails to properly associate an anticipatory hedge with the hedged bonds, or otherwise fails to meet the requirements of this section, the Commissioner may recompute the yield on the issue taking the hedge into account if the failure to take the hedge into account distorts that yield or otherwise fails to clearly reflect the economic substance of the transaction.

[T.D. 8538, 59 FR 24042, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25507, May 9, 1997]

§ 1.148-5A Yield and valuation of investments.

(a) through (b)(2)(ii) [Reserved]. For guidance see § 1.148-5.

(b)(2)(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* For all purposes of section 148, an issuer may treat all of the yield restricted nonpurpose investments in a refunding escrow and a sinking fund that is reasonably expected as of the issue date to be maintained to reduce the yield on the investments in the refunding escrow as a single investment

having a single yield, determined under § 1.148(b)(2).

(b) (2)(iv) through (c)(1) [Reserved]. For guidance see § 1.148-5.

(c)(2) *Manner of payment*—(i) *In general*. Except as otherwise provided in § 1.148-5(c)(2)(ii), an amount is paid under § 1.148-5(c) if it is paid to the United States at the same time and in the same manner as rebate amounts are required to be paid or at such other time or in such manner as the Commissioner may prescribe. For example, yield reduction payments must be made on or before the date of required rebate installment payments as described in § 1.148-3(f). The date a payment is required to be paid is determined without regard to § 1.148-3(h). An amount that is paid untimely is not taken into account under this paragraph (c) unless the Commissioner determines that the failure to pay timely is not due to willful neglect. The provisions of § 1.148-3(i) apply to payments made under § 1.148-5(c).

(c)(2)(ii) through (c)(3)(i) [Reserved]. For guidance see § 1.148-5.

(c)(3)(ii) *Exception to yield reduction payments rule for advance refunding issues*. Section 1.148-5(c)(1) does not apply to investments allocable to gross proceeds of an advance refunding issue, other than—

(A) Transferred proceeds to which § 1.148-5(c)(3)(i)(C) applies;

(B) Replacement proceeds to which § 1.148-5(c)(3)(i)(F) applies; and

(C) Transferred proceeds to which § 1.148-5(c)(3)(i)(E) applies, but only to the extent necessary to satisfy yield restriction under section 148(a) on those proceeds treating all investments allocable to those proceeds as a separate class.

(d)(1) through (d)(3)(i) [Reserved]. For guidance see § 1.148-5.

(d)(3)(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds*. Section 1.148-5(d)(3)(i) does not apply if the investment is allocated from one issue to another issue as a result of the transferred proceeds allocation rule under § 1.148-9(b) or the universal cap rule under § 1.148-6(b)(2), provided that both issues consist exclusively of tax-exempt bonds. In addition, § 1.148-

5(d)(3)(i) does not apply to investments in a commingled fund (other than a bona fide debt service fund) unless it is an investment being initially deposited in or withdrawn from a commingled fund described in § 1.148-6(e)(5)(iii).

(e)(1) through (e)(2)(ii)(A) [Reserved]. For guidance see § 1.148-5.

(e)(2)(ii)(B) *External commingled funds*. For any semiannual period, a commingled fund satisfies the 10 percent requirement of § 1.148-5(e)(2)(ii)(B) if—

(1) Based on average amounts on deposit, this requirement was satisfied for the prior semiannual period; and

(2) The fund does not accept deposits that would cause it to fail to meet this requirement.

(iii) *Special rule for guaranteed investment contracts*. For a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the provider is treated as an administrative cost and, except in the case of an issue that satisfies section 148(f)(4)(D)(i), is not a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, exceeds the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. For this purpose, present value is computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate.

[T.D. 8538, 59 FR 24045, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25507, May 9, 1997]

§ 1.148-6A General allocation and accounting rules.

(a) through (d)(3)(iii)(B) [Reserved]. For guidance see § 1.148-6.

(d)(3)(iii)(C) *Qualified endowment funds treated as unavailable*. For a 501(c)(3) organization, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(1) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(2) Pursuant to reasonable, established practices of the organization,